



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2022-0428; FRL-9991-02-R4]

Air Plan Approval; North Carolina; Air Quality Control, Revisions to Particulates from Fugitive Dust Emissions Sources Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing the approval of changes to the North Carolina State Implementation Plan (SIP), submitted by the State of North Carolina through the North Carolina Division of Air Quality (NCDAQ) through a letter dated September 10, 2021. The SIP revision includes changes to the State's air pollution control requirements in the SIP that modify several definitions, clarify its applicability requirements, adjust the requirement for fugitive dust control plan submissions, and make minor language and formatting changes. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2022-0428. All documents in the docket are listed on the [regulations.gov](https://www.regulations.gov) website. Although listed in the index, some information may not be publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division,

U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Pearlene Williams-Miles, Multi-Air Pollutant Coordination Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, North Carolina 30303-8960. The telephone number is (404) 562-9144. Ms. Williams-Miles can also be reached via electronic mail at WilliamsMiles.Pearlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On September 10, 2021, NCDAQ submitted a revision to North Carolina's Rule 15A North Carolina Administrative Code (NCAC) 02D .0540, *Particulates from Fugitive Non-Process Dust Emission Sources*.^{1,2} The submittal makes changes to the State's air pollution control requirements by revising several definitions, clarifying applicability requirements, updating language, and making other minor changes to the corresponding particulate matter fugitive emission control regulation in the North Carolina SIP.³ EPA believes that the changes to Rule 02D .0540 provide additional clarity to the applicability of control plans and control plan procedures, rule exemptions, and definitions for fugitive dust emission sources. EPA has determined that the changes to the SIP do not interfere with attainment and maintenance of the NAAQS or any other applicable requirement of the Act.

¹ EPA received the September 10, 2021, submittal on September 14, 2021. For clarity, throughout this rulemaking EPA will refer to the September 14, 2021, submission by its cover letter date of September 10, 2021.

² The September 10, 2021, submittal included several changes to other North Carolina SIP-approved rules that are not addressed in this rulemaking. EPA will act on those rule revisions in separate actions.

³ NCDAQ submitted a letter to EPA on January 25, 2023, withdrawing the changes to Rule .0540(e)(1) from consideration for inclusion in the North Carolina SIP. For this reason, EPA is not acting on the changes to paragraph (e)(1) in this rulemaking.

Through a notice of proposed rulemaking (NPRM), published on March 23, 2023 (88 FR 17479), EPA proposed to approve the September 10, 2021, changes to North Carolina Rule 15 NCAC 02D .0540. The details of North Carolina's submission, as well as EPA's rationale for approving the changes, are described in more detail in the March 23, 2023, NPRM. Comments on the March 23, 2023, NPRM were due on or before April 24, 2023. No comments were received on the March 23, 2023, NPRM.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in section I of this preamble, EPA is finalizing the incorporation by reference of 15A NCAC 02D .0540, *Particulates from Fugitive Dust Emission Sources*, State effective on September 1, 2019, into the North Carolina SIP with the exception of paragraph (e)(1).⁴ EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.⁵

III. Final Action

EPA is finalizing the approval of the September 10, 2021, SIP revision to incorporate various changes to North Carolina's fugitive emission dust control regulation. Specifically, EPA is proposing to approve various changes to Rule 02D .0540, *Particulates from Fugitive Dust*

⁴ Paragraph (e)(1) remains in the SIP with a State effective date of August 1, 2007.

⁵ See 62 FR 27968 (May 22, 1997).

Emission Sources, as explained herein. EPA is proposing to approve these changes for the reasons discussed above.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

NCDAQ did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52.

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 22, 2023.

Daniel Blackman,
Regional Administrator,
Region 4

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II – North Carolina

2. In § 52.1770, amend the table in paragraph (c)(1) by revising the entry for “Rule .0540” to read as follows:

§ 52.1770 Identification of plan.

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(c) * * *

(1) EPA Approved North Carolina Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Section .0500 Emission Control Standards				
**	**	*	*	*
Rule .0540	Particulates from Fugitive Dust Emission Sources	9/1/2019	[Insert date of publication in <u>Federal Register</u>], [Insert citation of publication]	With the exception of paragraph (e)(1), which has a State effective date of August 1, 2007.
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